

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6331 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

GULAMNABI MANSURI C/O ST KARAMCHARI MANDAL

Appearance:

1. Special Civil Application No. 6331 of 1997
MR HS MUNSHAW for Petitioner No. 1
NOTICE UNSERVED for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/09/2001

ORAL JUDGEMENT

#. By consent of the parties, the matter is taken up for final hearing today.

#. The respondent workman was working as conductor in

the S.T. Corporation. He was on duty on 6.1.1984 in a S.T. Bus which was proceeding towards its destination. While the bus was in motion, a door on the conductor's side got opened itself which resulted into an accident and therefore one passenger who was standing near the door, unfortunately died. In view of the aforesaid incident, departmental inquiry was conducted against the petitioner on the ground that he was careless in not applying the safety lock on the aforesaid door. He was accordingly dismissed from service by the Disciplinary Authority. The said order of the Disciplinary Authority was challenged by the respondent workman by filing the First Appeal before the Appellate Authority. The First Appellate Authority modified the penalty of dismissal by withholding three increments with future effect. The respondent workman challenged the said order before the Second Appellate Authority. Second Appellate Authority further modified the said penalty of withholding of three increments with future effect to withholding of two increments with future effect. The respondent workman was yet not satisfied, and therefore, he raised the industrial dispute, which was numbered as Reference (IT) No.297 of 1992, before the Industrial Tribunal. The Industrial Tribunal by its order dated 24.12.1996 allowed the said reference. The Industrial Tribunal came to the conclusion that even though safety lock is applied, sometime the passengers opened the said lock in order to get down at a particular place of their choice. The Industrial Tribunal, therefore, came to the conclusion that there is no evidence to show that the conductor concerned had not applied the safety lock. Under these circumstances, reference was allowed and penalty imposed by the second appellate authority was set aside. The said award is impugned in this petition at the instance of the S.T. Corporation.

#. I have heard the learned advocate of both the sides at length.

#. It is required to be noted that the disciplinary authority, on appreciation of the evidence on record, has reached to the conclusion that, there was some negligence on the part of the respondent workman. The appellate authority, however, reduced the penalty. In my view, it cannot be said that this is a case of absolutely no evidence and if the disciplinary authority, on the available evidence, has reached the finding about negligence on the part of the respondent workman, the Industrial Tribunal should not have interfered with the same in coming to the conclusion that there was absolutely no negligence on the part of the respondent

workman. In any case, it cannot be said that this is not a case of no evidence at all. In that view of the matter, in my view, at least some penalty was required to be imposed upon the respondent workman by the Industrial Tribunal. The Industrial Tribunal has taken very liberal view of the whole case. In that view of the matter, the award of the Industrial Tribunal is required to be interfered with and instead of totally exonerating the concerned workman, he should have been subjected to some penalty. Since considerable time has passed after the award of the Industrial Tribunal and since the second appellate authority has awarded the penalty of withholding of two increments with future effect, I am of the opinion that, in the facts and circumstances of the case, the respondent workman should be subjected to the penalty of withholding of one increment with future effect. The award of the Industrial Tribunal is accordingly modified to the aforesaid extent and the concerned workman will be subjected to the penalty of withholding of one increment with future effect. The S.T.Corporation is directed to give benefits to the respondent workman which are required to be given to him in view of the aforesaid substituted penalty and the difference of amount which is required to be given on the basis of the aforesaid penalty of withholding of one increment with future effect, shall be paid within a period of one month from today. Rule is partly made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)